



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2009-0783]; FRL-9669-2]

Approval and Promulgation of Implementation Plans;

Commonwealth of Kentucky; Regional Haze State Implementation Plan; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: On March 30, 2012, EPA published a rule finalizing a limited approval and a limited disapproval of two revisions to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), on June 25, 2008, and May 28, 2010, to address regional haze. In that rulemaking, EPA inadvertently excluded an entry to the table for EPA-approved Kentucky non-regulatory provisions. This action amends the table by adding an entry for Kentucky's regional haze SIP and SIP amendment.

DATES: This action is effective [Insert date of publication in the Federal Register].

ADDRESSES: Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Benjamin can be reached at 404-562-9040, or via electronic mail at benjamin.lynorae@epa.gov.

SUPPLEMENTARY INFORMATION

I. Background:

On March 30, 2012, EPA published a rule finalizing a limited approval and a limited disapproval of two revisions to the Kentucky SIP submitted by DAQ on June 25, 2008, and May 28, 2010, addressing regional haze. *See* 77 FR 19098. In the final action, EPA inadvertently excluded an entry identifying Kentucky's regional haze SIP and SIP amendment in the table of "EPA-Approved Kentucky Non-Regulatory Provisions" located at 40 CFR 52.920(e).

II. Action

This action amends the table in 40 CFR 52.920(e) by adding an entry for Kentucky's regional haze SIP and SIP amendment. EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action are unnecessary because today's

action, adding an entry in the table located at 40 CFR 52.920(e), has no substantive impact on EPA's March 30, 2012, limited approval and limited disapproval of the regional haze SIP revisions. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction, or in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the meaning of EPA's analysis or action related to the regional haze SIP revisions.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's action only adds an entry in 40 CFR 52.920(e) identifying EPA's March 30, 2012, limited approval of Kentucky's regional haze SIP. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution,

or Use” (66 FR 28355, May 22, 2001). This action only adds an entry identifying EPA’s March 30, 2012, limited approval of Kentucky’s regional haze SIP in the table located at 40 CFR 52.920(e), and imposes no additional requirements beyond those imposed by state law.

Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Furthermore, this rule does not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), given the nature of this action as described above.

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule only adds an entry identifying EPA’s limited approval of Kentucky’s regional haze SIP in the table located at 40 CFR 52.920(e), and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This

rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 23, 2012

A. Stanley Meiburg
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52--[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S -- Kentucky

2. Section 52.920(e) is amended by adding an entry for “Regional Haze Plan and Plan Amendment” to the end of the table to read as follows:

§52.920 Identification of plan.

* * * * *

(e) * * *

EPA-Approved Kentucky Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
**	**	*	*	*
Regional Haze Plan and Plan Amendment	Statewide	06/25/08 and 05/28/10	03/30/12, 77 FR 19098	Source-specific BART requirements are summarized in Table 7.5.3-2 of the Commonwealth’s May 28, 2010 submittal

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